

POR SF  
11.3.31.1.1

01-05D

---

# LEASE OF YARD AREA

---

BETWEEN

THE PORT OF PORTLAND

AND

MULTNOMAH COUNTY

Dated as of: April 13, 2001

---



POPT1N100410

## TABLE OF CONTENTS

1.	AGREEMENT TO LEASE .....	1
1.1	Agreement to Lease and Description of Premises	1
1.2	Use of Premises	1
1.2.1	Permitted Use	1
1.2.2	Prohibited Activities	1
1.2.3	Access and Limitations on Use	2
1.3	Port Right to Lease to Others	2
1.4	Compliance With All Laws	2
2.	LEASE CONTINGENCIES .....	2
2.1	Due Diligence	2
2.2	Port Acceptance of Permitting Requirements	3
3.	TERM .....	3
4.	RENT .....	3
4.1	Basic Rent, Rent, and Additional Rent	3
4.2	Rent Payments	3
4.2.1	Due Dates	3
4.2.2	Place for Payments; No Offset	3
4.2.3	Delinquency Charge	3
4.3	Acceptance of Rent	4
4.4	Security Deposit	4
5.	CONSTRUCTION ON THE PREMISES .....	4
5.1	Construction of Improvements	4
5.1.1	The Facility	4
5.1.2	Permitting of the Facility	5
5.1.3	General Construction Obligations	5
5.1.4	Construction Related Costs and Activities	6
5.1.5	Inspection of Construction	6
5.1.6	Submission of Drawings	6
5.1.7	Occupancy Permit	6
5.2	Waste, Removal and Demolition	6
6.	MAINTENANCE AND MANAGEMENT OF PREMISES .....	6
6.1	Maintenance	6
6.2	No Liens	7
6.3	Utilities	7
6.4	Signs	7
6.5	Fire Safety	7

6.6	Security	8
7.	PORT AUTHORITY AND OBLIGATIONS.....	8
7.1	Delivery of Premises	8
7.2	Condition of Premises	8
7.3	Port Access to Premises	8
8.	ENVIRONMENTAL MANAGEMENT AND COMPLIANCE .....	8
8.1.1	Hazardous Substance	9
8.1.2	Environmental Cost	9
8.1.3	Hazardous Substance Release	9
8.2	General Environmental Obligations of Lessee	9
8.3	Use of Hazardous Substances	9
8.4	Storm Water Conveyance and Treatment	10
8.5	Discharge and Treatment of Waste Water	10
8.6	Treated or Contaminated Soil/Waste	10
8.7	Environmental Audits	10
8.7.1	Initial Audit	10
8.7.2	Special Audit	10
8.7.3	Exit Audit	11
8.7.4	Audit Requirements	11
8.8	Environmental Inspection	11
8.9	Lessee's Liability	11
8.9.1	Hazardous Substance Releases	11
8.9.2	Initial and Exit Audits	11
8.9.3	Lessee's Liability for Environmental Cost	12
8.9.4	Limitation of Lessee's Liability	12
8.10	Environmental Remediation	12
8.10.1	Immediate Response	12
8.10.2	Remediation	12
8.10.3	Report to the Port	12
8.10.4	Port's Approval Rights	12
8.11	Notice	13
8.12	Port's Right to Perform on Behalf of Lessee	13
9.	INDEMNITY, INSURANCE .....	13
9.1	Lessee's General Indemnity; Reimbursement of Damages	13
9.2	Insurance Requirements	14
9.2.1	Self-Insurance; Contractor Insurance	14
9.2.2	Certificates; Notice of Cancellation	14
9.2.3	Additional Insured; Separation of Insureds	14
9.2.4	Primary Coverage	14
9.2.5	Company Ratings	14

9.3	Required Insurance	15
9.3.1	General Liability Insurance	15
9.3.2	Property Insurance	15
9.3.3	Automobile Liability Insurance	15
9.3.4	Workers' Compensation Insurance	15
9.3.5	Builder's Risk Insurance	16
9.3.6	Lessee's Risks	16
9.4	Waiver of Subrogation	16
9.5	Survival of Indemnities	16
10.	DAMAGE OR DESTRUCTION.....	16
11.	TERMINATION.....	17
11.1	Duties on Termination	17
11.2	Lessee's Personal Property	17
11.3	Holding Over	17
12.	DEFAULT .....	17
12.1	Event of Default	17
12.1.1	Default in Rent	18
12.1.2	Default in Other Covenants	18
12.2	Remedies on Default	18
12.2.1	Re-Entry	18
12.2.2	Recovery of Damages	18
12.3	Lease Continuation	18
12.4	Remedies Cumulative and Nonexclusive	19
12.5	Curing Lessee's Default	19
13.	ASSIGNMENTS AND SUBLEASES .....	19
14.	CONDEMNATION.....	19
15.	GENERAL PROVISIONS .....	19
15.1	Lease Subject to Matters of Record and Applicable Laws	19
15.2	Governing Law	20
15.3	No Benefit to Third Parties	20
15.4	Port Consent or Action	20
15.5	No Implied Warranty	20
15.6	Notices	20
15.7	Time of the Essence	21
15.8	Nonwaiver	21
15.9	Survival	21
15.10	Partial Invalidity	21
15.11	No Light or Air Easement	22

15.12	Limitation on Port Liability	22
15.13	Calculation of Time	22
15.14	Headings and Table of Contents	22
15.15	Exhibits Incorporated by Reference	22
15.16	Modification	22
15.17	Brokers	22
15.18	Attorney Fees	22
15.19	Entire Agreement	23
15.20	Provisions Applicable to Others	23
15.21	Successors; the Parties	23
15.22	Joint and Several Obligations	23
15.23	Interpretation of Lease; Status of Parties	23
15.24	Defined Terms	23
15.25	No Limit on Port's Powers	24
15.26	Capacity to Execute	24

## DEFINITIONS

Additional Rent.....	3
all risk.....	15
AS IS.....	8
as-built.....	6
Basic Rent .....	3
Business Days .....	22
Commencement Date.....	3
Costs.....	13
Default.....	17
Delinquency Charge.....	3
Delinquency Rate.....	4
Deposit .....	4
DEQ .....	13
Due Diligence Period .....	2
Effective Date .....	1
Environmental Cost .....	9
Event of Default.....	17
Exit Audit.....	11
Expiration Date .....	3
Facility .....	5
Hazardous Substance .....	9
Hazardous Substance Release.....	9
Indemnitor.....	22
Initial Audit.....	10
ISO .....	14
Lease .....	1
Lease Term.....	3
Legal Holiday.....	22
Lessee.....	1
Loss.....	16
Permitted Use.....	1
Port.....	1
Premises .....	1
Rent.....	3
Special Audit.....	11
T-1 North .....	1
Work .....	5
XCU .....	15

## LEASE OF YARD AREA

This Lease of Yard Area (the "Lease"), effective April 5, 2001 ("Effective Date"), is between The Port of Portland, a port district of the State of Oregon (the "Port") and Multnomah County, a municipal corporation organized under the laws of the State of Oregon ("Lessee").

### RECITALS

A. The Port is the owner of certain real property commonly known as Terminal 1 North ("T-1 North"), located at 2500 N.W. Front Avenue, in the City of Portland, Multnomah County, Oregon.

B. Lessee is in the process of remodeling its booking facility and needs to temporarily relocate the facility during the remodeling project. Lessee desires to lease sufficient yard space at T-1 North on which to locate its temporary booking facility, on the terms and conditions set out in this Lease.

Therefore, the parties, intending to be legally bound by the terms of this Lease, and for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, agree as follows.

### 1. AGREEMENT TO LEASE

#### 1.1 Agreement to Lease and Description of Premises

The Port hereby leases to Lessee, and Lessee leases from the Port, that certain improved yard space located at T-1 North, as shown in the attached **Exhibit A**, consisting of approximately thirty five thousand two hundred and twenty five (35,225) square feet, together with any improvements existing or to be constructed thereon, including without limitation the "Facility" defined below (collectively, the "Premises"). If Lessee desires to occupy yard area over and above thirty five thousand two hundred and twenty five (35,225) square feet, Lessee must obtain prior written approval of the Port and shall pay additional Rent as stated in Section 4.1. The amount of additional yard space occupied by Lessee at any time during this Lease shall be determined by the Port.

#### 1.2 Use of Premises

##### 1.2.1 Permitted Use

Lessee may use the Premises only to construct and operate its temporary facility for the booking of detainees in the criminal justice system (the "Permitted Use"). The facility shall be completely segregated from the remainder of T-1 North, and surrounded by security fencing to be installed by Lessee as part of its construction. **No other use of the Premises shall be permitted.**

##### 1.2.2 Prohibited Activities

No trucks, trailers or other vehicles used to transport liquid or any Hazardous Substance, as that term is defined in Section 8.1.1, may be brought onto the Premises, at any time, regardless of whether such vehicle is empty. No manufacturing processes of any kind shall

be allowed on the Premises. No Hazardous Substances may be brought onto, used, handled, treated, recycled, disposed of, transferred, transported, deposited, placed, or stored on the Premises, except as specifically provided in Section 8.3. No washing, fueling, repair, maintenance, or modifications of vehicles or other equipment, or other activities other than the Permitted Use are permitted on the Premises. Lessee shall not operate on the Premises any underground, above-ground, or mobile storage tank, except as expressly permitted in writing by the Port.

### **1.2.3 Access and Limitations on Use**

Lessee shall not enter any areas of T-1 North except the Premises. Lessee shall not, without the prior written consent of the Port, use any vehicles or equipment which would violate any local noise ordinance or cause substantial vibrations, fumes, or electronic interferences on the Premises. Lessee shall not permit anyone else to use the Premises nor shall Lessee permit anything to be done on the Premises which: (i) adversely affects or is likely to adversely affect the Premises; (ii) creates any condition that may be a safety hazard; (iii) creates or tends to create a hazard or a nuisance; or (iv) unreasonably inconveniences other tenants or occupants of T-1 North. No other use may be made of the Premises without the prior written approval of the Port, which approval shall be in the sole discretion of the Port.

### **1.3 Port Right to Lease to Others**

The Port reserves the right to lease space other than the Premises within T-1 North to other tenants, and to provide those other tenants access to areas of T-1 North which are outside the Premises. The Port has no obligation either to partition off the separate spaces of tenants, or to take any security measures.

### **1.4 Compliance With All Laws**

Lessee's activities on, or use or possession of the Premises must comply with all applicable laws, ordinances, codes, rules and regulations of state, federal, city, county, the Port or other public government authority or agency. Lessee shall promptly provide the Port with copies of all communications from any government entity which relate to Lessee's noncompliance or alleged noncompliance with any law, ordinance, code, rule, regulation or other governmental requirement relating to its operations on the Premises.

## **2. LEASE CONTINGENCIES**

### **2.1 Due Diligence**

Lessee shall have from the Effective Date through April 10, 2001 ("Due Diligence Period"), to complete the Initial Audit required in Section 8.7.1 and determine that the environmental condition of the Premises is acceptable for construction and operation of Lessee's Facility, defined in Section 5.1.1 below. If either Lessee or the Port, in its respective sole discretion, is not satisfied with the results of the Initial Audit, the Lessee or the Port may terminate this Lease on or before 5:00 p.m. on April 17, 2001.



## **2.2 Port Acceptance of Permitting Requirements**

Lessee shall apply for all permits necessary to construct the Facility, in accordance with Section 5.1.2. Should the City or other government agencies attach conditions to its or their approval of Lessee's Facility that require the Port or the Lessee to make any alterations to T-1 North that are unacceptable to the Port, in its sole discretion, then the Port may terminate this Lease by providing written notice of such termination to Lessee within fifteen (15) days after receipt by the Port of written notice of such condition.

## **3. TERM**

This Lease shall be binding upon the parties as of the Effective Date. The term of this Lease (the "Lease Term") shall commence on April 5, 2001 (the "Commencement Date"), and shall terminate June 30, 2002 (the "Expiration Date"), unless otherwise terminated pursuant to the terms of this Lease.

## **4. RENT**

### **4.1 Basic Rent, Rent, and Additional Rent**

Lessee shall pay to the Port monthly "Basic Rent" in the sum of five thousand two hundred eighty three and 75/100 dollars (\$5,283.75), based upon the use of thirty five thousand two hundred twenty five (35,225) square feet of yard area, at a rate of fifteen cents (\$.15) per square foot per month. All other sums which become payable by Lessee under this Lease shall be considered "Additional Rent". "Rent," as used in this Lease, shall mean Basic Rent together with Additional Rent.

### **4.2 Rent Payments**

#### **4.2.1 Due Dates**

Rent payable to the Port under this Lease shall be due and payable, in advance, without notice, commencing upon the Commencement Date and continuing on the first day of each and every calendar month thereafter through the Expiration Date. Rent for any partial month shall be accordingly prorated.

#### **4.2.2 Place for Payments; No Offset**

Payment of Rent shall be made without offset, abatement, or deduction to the Port at the following address or such other place as the Port may designate:

The Port of Portland  
Unit 27  
P.O. Box 4900  
Portland, OR 97208-4900

#### **4.2.3 Delinquency Charge**

All Rent, including, but not limited to, any amounts paid by the Port on Lessee's behalf, not paid by Lessee within thirty (30) days of the date due shall bear a "Delinquency Charge" at the rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate

allowed by applicable law (the "Delinquency Rate") from the date such Rent is past due until it is paid in full. The Delinquency Rate is subject to periodic change by the Port. No change shall occur, however, without at least thirty (30) days' prior written notice to Lessee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port for failure to timely pay Rent.

#### **4.3 Acceptance of Rent**

The Port's acceptance of a late or partial payment of Rent and/or a Delinquency Charge shall not constitute a waiver of any Event of Default nor shall it prevent the Port from exercising any of its other rights and remedies granted to the Port under this Lease or by law. It is hereby agreed that any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal effect. Lessee shall remain in violation of this Lease and shall remain obligated to pay all Rent due even if the Port has accepted a partial or late payment of Rent.

#### **4.4 Security Deposit**

Lessee shall deposit with the Port, and continuously maintain, upon execution of this Lease, a security deposit in the amount of fifteen thousand dollars (\$15,000.00) ("Deposit"). The Deposit shall not earn interest for Lessee and may be commingled with other funds of the Port. The Deposit shall secure Lessee's full and faithful performance and observance of all of Lessee's obligations under this Lease. The Deposit shall not be considered to be held in trust by the Port for the benefit of Lessee and shall not be considered an advance payment of Rent or a measure of the Port's damages in the case of an Event of Default, as defined in Section 12, by Lessee. The Port may, but shall not be obligated to, draw upon and apply the Deposit to: (i) pay any Basic Rent or other Rent not paid on or before the date it is due and the Port shall not be required to give notice or opportunity to cure before drawing on the Deposit; and/or (ii) remedy any violation of this Lease, after Lessee has received notice and opportunity to cure, if such notice and opportunity to cure is required under this Lease. If the Port applies any of the Deposit to any of the above, Lessee shall, immediately upon demand, replenish the Deposit to its full amount. If Lessee fully performs all of its obligations under this Lease, the Deposit, or any balance remaining, will be released within thirty (30) days from the date of termination of this Lease and delivery of the Premises to the Port. However, if any question exists concerning Lessee's full compliance with the Lease, or if there is any obligation under this Lease to be performed after the termination date of this Lease, the Port shall be entitled to require that the Deposit remain in place until the Port is fully satisfied that there has been no violation of the Lease and all obligations due under this Lease have been fully performed, even if it takes the Port longer than thirty (30) days to make such a determination to the Port's satisfaction.

### **5. CONSTRUCTION ON THE PREMISES**

#### **5.1 Construction of Improvements**

##### **5.1.1 The Facility**

Lessee intends to construct a temporary facility for the booking of persons detained under the criminal justice system, as soon as possible after the Effective Date (the

"Facility"). Lessee will submit proposed plans and specifications for the design and construction of the Facility to the Port for the Port's review and approval, which the Port may withhold in its sole and reasonable discretion, as further set forth below. Lessee agrees that design and construction of the Facility shall conform to the requirements set forth in this Section 5.

#### **5.1.2 Permitting of the Facility**

Lessee shall be responsible for applying to the City of Portland and any other governmental agencies with jurisdiction for any permits necessary or required to construct and operate the Facility or with respect to any Work (defined in Section 5.1.3). Lessee shall promptly provide to the Port copies of all correspondence and other documentation sent by Lessee to the City or such other agencies, or sent to Lessee or its agents from the City or such agencies, concerning Lessee's applications for permits. Should the City or other government agencies attach conditions to its or their approval of Lessee's Facility that require the Port or the Lessee to make any alterations to T-1 North that are unacceptable to the Port, in its sole discretion, then the Port, at its election, may terminate this Lease by providing written notice of such termination to Lessee within fifteen (15) days after receipt by the Port of written notice of such condition.

#### **5.1.3 General Construction Obligations**

In addition to any other requirements imposed by applicable law, Lessee shall make no improvements or alterations to the Premises of any kind, including without limitation Lessee's construction of the Facility and any subsequent modifications thereof ("Work") without first obtaining the Port's written consent, which consent may be withheld in the Port's sole and reasonable discretion. For any proposed Work, including without limitation the initial design and construction of the Facility, Lessee will submit the following to the Port for the Port's review and approval, which the Port may withhold in its sole and reasonable discretion, at least thirty (30) days prior to commencement of any construction: (i) the name of the proposed contractor; (ii) the proposed plans and specifications; (iii) a site-use plan; (iv) architectural and/or engineering renderings; and (v) Lessee's environmental controls for any planned Work aimed at preventing Hazardous Substance Releases and at otherwise complying with Section 8. The Port shall have thirty (30) days from its receipt from Lessee of Lessee's proposed plans and specifications to approve or disapprove the proposed plans and specifications or to approve the proposed plans and specifications with conditions. The Port may impose reasonable requirements on Lessee and on the contractors and agents performing Work on behalf of Lessee, including, but not limited to, the requirement to submit plans and specifications in such detail and quantity as is determined necessary by the Port. The Port shall have thirty (30) days from the date of the submission of all required information concerning the Work to approve, disapprove or approve subject to conditions, the proposed Work. If Lessee does not receive any written comments from the Port within this time period, the Port shall be deemed to have approved the submissions. If the submissions are disapproved by the Port, Lessee may revise and resubmit all required materials in accordance with this Section 5.1. Once approved and commenced, the Work shall be performed diligently to completion in a good and workmanlike manner, in accordance with the approved plans and specifications, with any conditions imposed upon such approval, and otherwise in accordance with this Lease.

#### **5.1.4 Construction Related Costs and Activities**

Lessee shall be responsible for all improvements, fencing, curbs, landscaping, utilities (including, without limitation, bringing such utilities from their current locations to the Premises and connecting to such utilities), and other necessary improvements required to be constructed in conjunction with any Work pursuant to the terms of this Section 5. All site preparation shall be the responsibility of Lessee. Lessee shall be responsible for any preparation of the Premises required for the construction of the Facility.

#### **5.1.5 Inspection of Construction**

The Port and its agents, employees, and representatives, shall at all times during construction, without advance notice, have the right to come upon the Premises for purposes of inspecting the construction of the Work. When exercising its rights under this Section 5.1.5, the Port agrees to interfere as little as is reasonably possible with Lessee's use and occupancy of the Premises and the Work in progress.

#### **5.1.6 Submission of Drawings**

Thirty (30) days after the completion of any Work under this Section 5, Lessee shall deliver to the Port complete and fully detailed "as-built" drawings of the completed improvements prepared by an architect or engineer licensed by the State of Oregon.

#### **5.1.7 Occupancy Permit**

Lessee shall submit to the Port a copy of the occupancy permit issued by the City of Portland within five (5) business days of its receipt by Lessee.

#### **5.2 Waste, Removal and Demolition**

Except as expressly permitted by this Lease, Lessee shall not cause or permit any waste or damage, disfigurement or injury to the Premises or the improvements existing at the commencement of this Lease and shall not remove or demolish, in whole or in part, any improvements on the Premises without the prior written approval of the Port, which the Port may withhold or condition in its sole discretion and, in addition, which the Port may condition upon the obligation of Lessee to replace the same by a comparable improvement or other improvement specified in such approval.

### **6. MAINTENANCE AND MANAGEMENT OF PREMISES**

#### **6.1 Maintenance**

All maintenance shall be the responsibility of Lessee. The Port will not perform any maintenance and will not make any repairs of the pavement or any improvements constructed by Lessee. Lessee shall be responsible for repairing any damage or deterioration in the pavement on any portion of T-1 North caused by Lessee's operations. Subject to the limitations of the Oregon Tort Claims Act, ORS 30.260-30.300, and within the limits in ORS 30.270, to the extent applicable, Lessee shall also be liable for any damage to the Premises or any portion of T-1 North caused by Lessee or Lessee's agents, subtenants, employees, contractors, suppliers, or invitees. Lessee shall provide proper containers for trash and garbage, if necessary, and make

arrangements acceptable to the Port to keep the Premises free and clear of rubbish, debris, and litter at all times.

#### **6.2 No Liens**

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided to the Premises. Lessee shall not suffer or permit any liens to attach to the Premises or the interest of Lessee, in all or any part of the Premises or T-1 North, by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee, or anyone occupying or holding an interest of Lessee, in all or any part of the improvements on the Premises, through or under Lessee. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within thirty (30) days after the date of filing of the same, by either payment, deposit or bond. In the event that Lessee fails to remove the lien within thirty (30) days, then, in addition to all other remedies set forth in Section 12, the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien upon written notice of such payment.

#### **6.3 Utilities**

Lessee shall promptly pay any charges for sanitary sewer, storm sewer, water, gas, electricity, telephone, and all other charges for utilities which may be furnished to the Premises. Lessee shall also be responsible to pay any and all installation, connection and impervious surface fees and all costs of bringing utilities to the Premises. The Port shall not be responsible for verifying the location of existing utility lines and/or connections. In the event Lessee desires to install utility lines or facilities on, under or over the Premises, Lessee shall first obtain the Port's written approval of the location of such lines or facilities. As required by Section 5.1.6, within thirty (30) days of the completion of the installation of the new lines or facilities, Lessee shall deliver to the Port complete and fully detailed as-built drawings of the completed lines or facilities prepared by an architect or engineer licensed by the State of Oregon. Lessee shall be responsible for the cost of maintenance and repair of all existing and newly installed utility lines.

#### **6.4 Signs**

Lessee shall not erect, install, nor permit upon the Premises any sign or other advertising device without first obtaining the Port's written consent, which the Port may withhold in its sole discretion. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state.

#### **6.5 Fire Safety**

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and, to that end, shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Premises and restricting the spread of any fire from the Premises.

## **6.6 Security**

Lessee shall be fully responsible for security of the Premises and to retain custody of its detainees. The Port will not provide security and shall have no liability for any damage, destruction, theft, or vandalism of Lessee's property or vehicles caused by any third party under any circumstance, nor shall the Port have any liability for injuries to, or injuries or damage caused by, Lessee's detainees while in custody, or after having escaped custody. Lessee acknowledges that other parties lease or use space in T-1 North and share the common entrance gate adjacent to the Premises. The Port shall not be responsible for the actions of any of these other tenants or third parties, including any damage or theft of Lessee's property or vehicles stored on the Premises.

## **7. PORT AUTHORITY AND OBLIGATIONS**

### **7.1 Delivery of Premises**

Lessee shall have the right to possession of the Premises on the Commencement Date. The Port shall have no liability to Lessee for any delay in delivering possession.

### **7.2 Condition of Premises**

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the environmental condition of the Premises or the suitability of the Premises for Lessee's intended uses. Lessee has inspected and accepts the Premises in "AS IS" condition upon taking possession, and assumes all risks of the condition of the Premises, known and unknown. The Port shall have no liability to Lessee, and Lessee shall have no claim against the Port, for any damage or injury caused by the condition of the Premises. The Port shall have no responsibility to bring the Premises into compliance with any laws. Without limiting the generality of the foregoing and without creating any representations or warranties concerning the Premises, the Port hereby notifies Lessee that the Premises may be beneath the flood plain, may be located upon an earthquake fault, may consist, in whole or in part, of land created from river dredge materials (which may or may not have sufficiently settled), and Lessee accepts all risk and loss associated with such conditions.

### **7.3 Port Access to Premises**

The Port shall have the right to enter upon the Premises for the purposes of: (i) confirming the performance by Lessee of all of Lessee's obligations under this Lease; (ii) doing any other act which the Port may be obligated or have the right to perform under this Lease; and (iii) for any other lawful purpose. Such entry shall be made with reasonable advance notice and during normal business hours, where practical, except in cases of emergency or a suspected violation of this Lease or the law. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry, except to the extent caused by the gross negligence or willful misconduct of the Port.

## **8. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

For the purposes of this Lease, the following definitions shall apply:

### **8 - YARD AREA LEASE**

\\popfs\propdev-pvt\legal\leases\archive\sheriff2001final.doc

### **8.1.1 Hazardous Substance**

"Hazardous Substance" includes any and all substances defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any applicable laws and regulations. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products.

### **8.1.2 Environmental Cost**

"Environmental Cost" includes, but is not limited to, costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any applicable laws and regulations; (ii) claims for damages, response costs, Special Audit costs, fines, fees or other relief relating to matters addressed in any applicable laws and regulations; (iii) injunctive relief relating to matters addressed in any applicable laws and regulations; (iv) Hazardous Substance Releases, and (v) violations of any environmental provisions of this Lease. Costs and damages as used in this Section shall include but not be limited to: (a) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring and maintenance; (b) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; (c) lost revenue; and (d) diminution of value, loss, or restriction on use of property.

### **8.1.3 Hazardous Substance Release**

"Hazardous Substance Release" shall be interpreted in the broadest sense to include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under applicable laws and regulations.

## **8.2 General Environmental Obligations of Lessee**

Lessee shall manage and conduct all of its activities on or relating to the Premises: (i) in compliance with applicable laws and regulations and the environmental provisions of this Lease (ii) in cooperation with the Port in the Port's efforts to comply with applicable laws and regulations; and (iii) in adherence with best management practices applicable to Lessee's use of the Premises. Lessee shall manage and, as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of law or regulations by any party on or relating to the Premises.

## **8.3 Use of Hazardous Substances**

In conjunction with and in the ordinary course of the Permitted Uses, and without further written consent, other than that granted by Section 8.3, Lessee shall be permitted to use, handle or store, for their intended purposes in accordance with all manufacturers' instructions, Hazardous Substances consisting of: (i) small quantities of ordinary janitorial, office and landscaping supplies available at retail; and (ii) petroleum-derived products fully contained within motor vehicles.

#### **8.4 Storm Water Conveyance and Treatment**

Lessee may be authorized to discharge storm water into the Port-owned storm water discharge conveyance system if Lessee enters into a then-current Storm Water Use Agreement. In order to comply with storm water discharge requirements, Lessee may be required to treat Lessee's Storm Water prior to discharge. If treatment is required, the Port shall have the right to approve or disapprove the method, design and installation of any such treatment system in order to ensure compliance with applicable laws and regulations and protection of Port property.

#### **8.5 Discharge and Treatment of Waste Water**

No industrial or other waste water discharge shall be made by Lessee into any Port-owned conveyance or storage system. The Port shall have the right to review and approve or disapprove any industrial waste water discharge treatment system of any kind to be installed or utilized upon the Premises.

#### **8.6 Treated or Contaminated Soil/Waste**

Lessee shall not store, treat, deposit, place or dispose of treated or contaminated soil, industrial by-products, or waste on the Premises, without the prior written consent of the Port, which consent may be granted or denied in the Port's sole discretion.

#### **8.7 Environmental Audits**

##### **8.7.1 Initial Audit**

Lessee shall retain a professional environmental firm to conduct an environmental assessment of the Property ("Initial Audit"). Lessee and the Port shall mutually approve the environmental firm and the scope and procedures of the Initial Audit with the understanding that the Initial Audit shall serve as evidence to determine future environmental liability, as described in more detail in Section 8.9. The scope of such audit shall be (i) a Phase I environmental site assessment which follows the American Society for Testing and Materials (ASTM) guideline (E1527-97) entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (revised)" and (ii) any phase II work as may be recommended by the Phase I report involving sampling of the Premises at locations selected by Lessee and approved by the Port. The consultant performing the Initial Audit must obtain from the Port a Permit and Right-of-Entry for conduct of the Initial Audit, before beginning work on the Premises. If Lessee discovers the existence or likely existence of any Hazardous Substances on the Property in the process of performing the Initial Audit, Lessee shall immediately notify the Port. In such an event, Lessee must receive the Port's consent to resume any further investigation. Lessee shall provide a copy of the Initial Audit report to the Port within seven (7) days of the date it receives the same.

##### **8.7.2 Special Audit**

If the Port, at any time during the Lease Term or any extension thereof, has reason to suspect that Hazardous Substances are being or have been used, handled, stored, generated, disposed, placed and/or transported contrary to the requirements of this Lease, in violation of applicable laws and regulations, or in any manner that has resulted, or is likely to result, in a Hazardous Substance Release, then the Port may, after written communication of those reasons



to Lessee, without limiting its other rights and remedies, conduct, a "Special Audit" of the Premises with respect to the environmental matters of concern to the Port.

#### **8.7.3 Exit Audit**

Lessee shall conduct and furnish to the Port, at Lessee's sole expense, an Environmental Audit ("Exit Audit") of the Premises, with a scope reasonably similar to that of the Initial Audit, to determine: (i) the environmental condition of the Premises; (ii) whether any Hazardous Substance Release has occurred during the Lease or exists on or about the Premises; and (iii) whether there is evidence of any violation of applicable laws and regulations or the environmental provisions of this Lease. The Exit Audit shall be performed not more than sixty (60) days prior to the scheduled Expiration Date of this Lease. Lessee shall provide to the Port, within ten (10) days prior to the expiration or termination of this Lease, a copy of the Exit Audit. In the event this Lease is terminated prior to the Expiration Date for any reason, Lessee shall cause the Exit Audit to be completed within sixty (60) days of such actual termination date of this Lease.

#### **8.7.4 Audit Requirements**

The scope of all Environmental Audits, except the Initial Audit and Exit Audit, shall be determined solely by the Port. If the Initial or Exit Audits performed under this Lease recommend additional testing or analysis or recommend an additional audit then, unless otherwise agreed to, in writing, by the Port and Lessee, Lessee shall perform the additional recommended testing, analysis or audit and the records and results of such additional work shall be considered a part of the audit that triggered the need for the additional work. The Port and Lessee shall each receive a signed copy of any Environmental Audit report prepared pursuant to this Lease.

#### **8.8 Environmental Inspection**

The Port reserves the right, at any time and from time to time, after notice to Lessee, to inspect the Premises, Lessee's operations on and use of the Premises, and Lessee's environmental records.

#### **8.9 Lessee's Liability**

##### **8.9.1 Hazardous Substance Releases**

Except as provided in Section 8.9.4, Lessee shall be responsible for any Hazardous Substance Release on the Premises, on other properties, in the air or in adjacent or nearby waterways (including groundwater) which results from or occurs in connection with Lessee's occupancy or use of the Premises occurring during the Lease Term or occurring or continuing after the Lease Term.

##### **8.9.2 Initial and Exit Audits**

The Initial and Exit Audits shall be used, but not exclusively, for determination of possible future Lessee liability for any violation by it of applicable laws and regulations or violation of an environmental provision of this Lease as to matters within the scope of the Initial and Exit Audits. Lessee shall be responsible for all response, remediation, restoration and

Environmental Cost arising from its violation of applicable laws and regulations or violation of any environmental provision of this Lease.

#### **8.9.3 Lessee's Liability for Environmental Cost**

Except as provided in Section 8.9.4, Lessee shall be responsible for all Environmental Cost arising under this Lease.

#### **8.9.4 Limitation of Lessee's Liability**

Notwithstanding anything to the contrary provided in this Lease, Lessee shall have no responsibility for Hazardous Substances or Hazardous Substance Releases, or Environmental Cost arising therefrom, that: (i) existed on the Premises prior to the Effective Date of this Lease (except if caused by Lessee or Lessee's agents, employees or contractors); or (ii) are caused by the Port or the agents, employees or contractors of the Port after the Effective Date of this Lease.

### **8.10 Environmental Remediation**

#### **8.10.1 Immediate Response**

In the event of a violation of applicable laws and regulations, a violation of an environmental provision of this Lease, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same, for which Lessee is responsible under this Lease, Lessee shall immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or investigate, contain, and stop, the Hazardous Substance Release and remove the Hazardous Substance.

#### **8.10.2 Remediation**

Lessee shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release for which Lessee is responsible and/or occurring on or from the Premises during Lessee's occupancy of the Premises or during the term of this Lease is remediated and that any violation of any applicable laws and regulations or environmental provision of this Lease is corrected. Lessee shall remediate, at Lessee's sole expense, all Hazardous Substances for which Lessee is responsible under this Lease or under any applicable laws and regulations, and shall restore the Premises or other affected property or water to its baseline condition, as established in the Initial Audit. Lessee shall not be required to restore property to its baseline condition if the Hazardous Substance contamination migrated from adjacent property over which Lessee had or has no control.

#### **8.10.3 Report to the Port**

Within thirty (30) days following completion of any investigatory, containment, remediation and/or removal action required by this Lease, Lessee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof.

#### **8.10.4 Port's Approval Rights**

Except in the case of an emergency or an agency order requiring immediate action, Lessee shall give the Port advance notice before beginning any investigatory, remediation

or removal procedures. The Port shall have the right to approve or disapprove the proposed investigatory, remediation and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Lease or by applicable laws and regulations, whether on the Premises or on any affected property or water. The Port will have the right to require Lessee to request oversight from the Oregon Department of Environmental Quality ("DEQ") of any investigatory, containment, remediation and removal activities and/or require Lessee to seek a statement from DEQ of "No Further Action."

#### **8.11 Notice**

Lessee shall promptly notify the Port upon becoming aware of: (i) a violation or alleged violation of any applicable laws and regulations related to the Premises or to Lessee's occupation or use of the Premises or any environmental provision of this Lease; and (ii) any Hazardous Substance Release on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any business day, Lessee shall notify the Port by calling the Port's emergency telephone number. That number currently is: (503) 335-1111.

#### **8.12 Port's Right to Perform on Behalf of Lessee**

Except in the event of an emergency or an agency order requiring immediate action, the Port shall have the right, upon giving Lessee seven (7) days written notice, to perform Lessee's obligations resulting from a Hazardous Substance Release for which Lessee is responsible under this Lease and charge Lessee the resulting Environmental Cost. The Port may not commence performance on behalf of Lessee under this Section if, within the seven (7) day notice period, Lessee promptly begins and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

### **9. INDEMNITY, INSURANCE**

#### **9.1 Lessee's General Indemnity; Reimbursement of Damages**

To the extent allowed under the Oregon Tort Claims Act, ORS 30.260-30.300, and within the limits in ORS 30.275, to the extent applicable, Lessee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against and reimburse the Port for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, Environmental Costs and/or penalties (collectively "Costs") which may be imposed upon, claimed against or incurred or suffered by the Port and which, in whole or in part, directly or indirectly, arise from, or are in any way connected with: (i) any act, omission or negligence of Lessee; (ii) any use, occupation, management or control of the Premises by Lessee; (iii) any condition created in or about the Premises by Lessee, including any accident, injury or damage resulting therefrom after the Effective Date; and (iv) any breach, violation or nonperformance of any of Lessee's obligations under this Lease. For purposes of this Section 9.1 (i) through (iv), Lessee shall be deemed to include Lessee and Lessee's commissioners, officers, employees, agents, invitees and contractors. This indemnification shall require Lessee to reimburse the Port for any diminution in value of the Premises, or other adjacent or nearby Port property, caused by Hazardous

Substances, including damages for loss of, or restriction on use of, rentable or usable property or of any amenity of the Premises or any other Port property, including damages arising from any adverse impact on the leasing of property in or near the Premises, including other Port property.

## **9.2 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements.

### **9.2.1 Self-Insurance; Contractor Insurance**

The Port recognizes that Lessee may be self-insured for some or all of the insurance coverages and amounts required under this Lease, and will accept a letter or other evidence of such self-insurance in lieu of other evidence of the required coverage. Lessee shall require each contractor or consultant entering onto the Premises for any Work to carry the required coverages and to name the Port as an additional insured on any policy of general liability insurance related to such Work.

### **9.2.2 Certificates; Notice of Cancellation**

On or before the Effective Date and thereafter during the Lease Term, Lessee shall provide the Port with current certificates of insurance evidencing the existence of all insurance policies required under this Section. The Port shall receive at least thirty (30) days' written notice prior to cancellation, non-renewal, or material change in any policy. Insurance must be maintained without any lapse in coverage during the Lease Term. The Port shall also be given certified copies of Lessee's policies of insurance, upon request. Failure of the Port to demand such certificates or other evidence of full compliance with these insurance requirements, or failure of the Port to identify any deficiency or noncompliance with coverage requirements, shall not be construed as a waiver of Lessee's obligation to maintain the insurance required by this Lease.

### **9.2.3 Additional Insured; Separation of Insureds**

The Port shall be named as an additional insured in each general liability policy and the general contractor's Contractors Pollution Liability policy. Such insurance shall provide cross-liability coverage equivalent to a standard Separation of Insureds clause published by the Insurance Services Offices ("ISO") or a successor organization.

### **9.2.4 Primary Coverage**

The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Port.

### **9.2.5 Company Ratings**

All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Port may, upon thirty (30) days' written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A-" rating.

### **9.3 Required Insurance**

At all times during this Lease, Lessee (except to the extent Lessee is permitted to self-insure pursuant to Section 9.2.1) and Lessee's contractor(s) shall provide and maintain the following types and amounts of coverage:

#### **9.3.1 General Liability Insurance**

Lessee shall maintain an occurrence form commercial general liability policy or policies covering liability arising from premises, operations, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee. Such coverage shall be written in an amount of not less than one million dollars (\$1,000,000.00) per occurrence. Insurance for Lessee's contractor(s) performing excavation or underground work on the Premises shall not exclude coverage for the explosion, collapse, and underground ("XCU") hazards. Lessee's general contractor shall carry Contractors Pollution Liability insurance covering sudden and accidental pollution liability and first party cleanup costs arising from the Work in an amount not less than one million dollars (\$1,000,000.00) per occurrence. Such insurance shall include coverage for exacerbation of existing contamination, but only to the extent of the additional liability and cleanup costs attributable to the exacerbation. If a policy is of claims-made type, coverage shall have a retroactive date prior to the Effective Date, and shall be maintained continuously in force (through renewal policies, and/or prior acts coverage, and/or extended reporting endorsements) for not less than two years after final acceptance of the Work by Lessee.

#### **9.3.2 Property Insurance**

Lessee shall maintain, in full force and effect during the Lease Term, "all risk" property insurance (including the perils of flood and earthquake/earth movement) or equivalent, covering all buildings, boilers and machinery, fixtures, equipment, and all other improvements and betterments located on the Premises. Coverage shall be in an amount equal to one hundred percent (100%) of the replacement value. Such insurance shall include the insurer's waiver of subrogation in accordance with Section 9.4.

#### **9.3.3 Automobile Liability Insurance**

Lessee shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property, including the loss of use thereof, arising from or in any way related to the use, loading or unloading of any of Lessee's automobiles (including owned, hired and non-owned vehicles) on and around the Premises. Coverage shall be in an amount of not less than one million dollars (\$1,000,000.00) each accident.

#### **9.3.4 Workers' Compensation Insurance**

Lessee shall maintain workers compensation and employers liability insurance for all of Lessee's employees subject to Oregon's Workers' Compensation law and any applicable jurisdiction. The amount of employers liability coverage shall be not less than five hundred thousand dollars (\$500,000.00) per accident and five hundred thousand dollars (\$500,000.00) per employee for disease. In lieu of such insurance, Lessee may maintain a self-insurance program

meeting the requirements of the State of Oregon and a policy of excess workers compensation and employers liability insurance.

#### **9.3.5 Builder's Risk Insurance**

During any construction activity, Lessee or its general contractor shall obtain and maintain for the benefit of the parties to the Lease and the construction contract, as their interest may appear, all-risk Builder's Risk insurance equal to one hundred percent (100%) of the value of the project. Coverage shall also include: (i) form work in place; (ii) form lumber on site; (iii) temporary structures; (iv) equipment; and (v) supplies related to the work while at the site.

#### **9.3.6 Lessee's Risks**

Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including, without limitation: (i) business interruption, such as business income, extra expense, or similar coverage, (ii) personal property insurance, and/or (iii) automobile physical damage and/or theft. In no event shall the Port be liable for any (a) business interruption or other consequential loss sustained by Lessee, (b) damage to or loss of property, or (c) damage to or loss of any automobile, whether or not such loss is insured. The Port is not responsible for securing the Premises nor protecting Lessee's property.

#### **9.4 Waiver of Subrogation**

Lessee waives any right of action that it and/or its insurance carrier(s) might have against the Port (including the Port's employees, officers, commissioners, or agents) for any loss, cost, damage, or expense (collectively "Loss") that is covered by any property or automobile physical damage insurance policy or policies maintained by Lessee. If any of Lessee's policies do not allow the insured to waive the insurer's rights of recovery prior to a Loss, Lessee shall cause it to be endorsed to allow the waivers of subrogation required by this Section.

#### **9.5 Survival of Indemnities**

The indemnity agreements set forth in Section 9 shall survive the expiration or earlier termination of the Lease and be fully enforceable thereafter.

### **10. DAMAGE OR DESTRUCTION**

In the event the Premises are partially or completely destroyed, the Port shall be under no obligation to repair and reconstruct the Premises. Lessee shall promptly repair or reconstruct the damaged or destroyed portions of the Premises, or, if the Premises are materially damaged and the cost to repair and/or reconstruct exceeds fifty percent (50%) of the original total cost to construct the Facility, then Lessee may terminate this Lease if Lessee makes such election within fifteen (15) days from the date of casualty, and remove all of Lessee's improvements from the Premises. If the Premises are completely destroyed or partially destroyed and, in the Port's opinion, are no longer safe for Lessee's continued use, the Port may terminate this Lease without advance notice and without liability to Lessee. There shall be no rent abatement for any period of time the Lessee undertakes repair or reconstruction unless Lessee's use or occupancy of the Premises is impaired, and then only in proportion to the amount of the Premises so impaired.

## **11. TERMINATION**

### **11.1 Duties on Termination**

Upon expiration or earlier termination of the Lease as provided in this Lease, Lessee must have: (i) met its Exit Audit and other environmental obligations required by Section 8, (ii) delivered all keys to the Premises to the Port, (iii) removed all personal property as provided in Section 11.2, (iv) removed the Facility and all other improvements constructed by Lessee, including all buildings, foundations, footings, fencing, utilities connections and other improvements constructed by Lessee; (v) surrendered the Premises in good and clean condition, restored to its condition at the Effective Date of this Lease; and (vi) performed any other obligations required to be performed prior to termination under this Lease. Fencing existing at the commencement of the Lease must be restored to its original location, and entrances and gates must be restored as directed by the Port. Failure to satisfy any of the above shall allow the Port, at the Port's sole option, to treat Lessee as a holdover tenant or tenant at sufferance, as provided in Section 11.3, until such time as Lessee has fulfilled all of its obligations under this Lease.

### **11.2 Lessee's Personal Property**

Lessee's personal property shall remain the property of Lessee if placed on the Premises by Lessee, at Lessee's expense. At or before the termination of this Lease, Lessee, at Lessee's expense, shall remove from the Premises any and all of Lessee's personal property and shall repair any damage to the Premises resulting from the removal of such personal property. Title to any items of Lessee's personal property which remain on the Premises after the termination of this Lease may, at the option of the Port, be transferred to the Port. The Port shall give an accounting thereof to Lessee and fifteen (15) days' notice to remove, or said property shall be removed and disposed of by the Port, and, in which case, the Port shall be entitled to recover its costs thereof, plus interest from the date of expenditure, at the Delinquency Rate, from Lessee upon demand.

### **11.3 Holding Over**

If Lessee holds over after the termination of this Lease, and the Port and Lessee have not otherwise agreed in writing upon the terms and provisions of such holding over, Lessee shall be deemed by the Port to be a tenant at sufferance and Lessee shall remain bound by all terms, covenants, and agreements hereof. Rent shall adjust as of the date of such termination or expiration of the Lease to one hundred fifty percent (150%) of the Basic Rent set forth in Section 4.1, and the Port may take immediate action to evict Lessee without notice and may otherwise exercise any other rights and remedies available to it at law or in equity for breach of this Lease.

## **12. DEFAULT**

### **12.1 Event of Default**

The occurrence of any of the following shall constitute an "Event of Default" (also referred to as a "Default").

#### **12.1.1 Default in Rent**

An Event of Default shall occur if Lessee fails to pay any Rent within ten (10) days after notice from the Port that the payment is overdue.

#### **12.1.2 Default in Other Covenants**

An Event of Default shall occur if Lessee violates any term, covenant or condition of this Lease (other than the payment of Rent) and such violation is not cured within thirty (30) days after written notice by the Port describing the nature of the violation. If the violation is of such a nature that it cannot be completely cured within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the violation within such thirty (30) day period and thereafter proceeds in good faith and with all due diligence to effect the cure as soon as practical. Notwithstanding the foregoing, the Port shall not be required to give notice for a violation of the same provision more than twice during any twelve-month period during this Lease. Thereafter a violation of the same provision shall constitute an Event of Default for which no further notice or opportunity to cure need be given. Furthermore, if any violation of this Lease threatens to cause serious harm to the Port or other tenants or persons, then the Port shall not be required to serve any notice before proceeding to request immediate injunctive relief or specific performance.

### **12.2 Remedies on Default**

Immediately upon the occurrence of an Event of Default, the Port may, at its option, terminate this Lease and Lessee's right to possession of the Premises, and at any time may exercise any or all of the following remedies, in addition to any other rights and remedies provided in this Lease or at law or equity. Any notice to terminate may be given before or within the applicable cure period and may be included in a notice of failure of compliance.

#### **12.2.1 Re-Entry**

The Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefor, and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold and enjoy the Premises.

#### **12.2.2 Recovery of Damages**

Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease in order to recover all damages and other compensation to which the Port is entitled as a result of Lessee's breach. The Port may also seek damages for destruction or damage Lessee has caused to the Premises or other Port property.

### **12.3 Lease Continuation**

Even though an Event of Default has occurred, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease, including the right to recover the Rents as they become due under this Lease. Acts of maintenance, preservation, or efforts to relet the Premises, or the appointment of



a receiver upon initiative of the Port to protect the Port's interest under this Lease, shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee.

#### **12.4 Remedies Cumulative and Nonexclusive**

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### **12.5 Curing Lessee's Default**

If Lessee fails to perform any of Lessee's obligations under this Lease, the Port, without waiving such failure, may, but shall not be obligated to, perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other case, only if such failure continues after the expiration of thirty (30) days from the date the Port gives Lessee notice of the failure. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port, upon demand, any amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee. The Port shall have the same rights and remedies in the event of the nonpayment of sums due to be reimbursed under this Section as in the case of Default by Lessee in the payment of any other Rent. Any sums to be so reimbursed shall bear interest at the Delinquency Rate.

### **13. ASSIGNMENTS AND SUBLEASES**

This Lease is personal to Lessee. No part of the Premises nor any interest in this Lease may be sold, assigned, pledged, transferred, mortgaged, or subleased by Lessee, nor may a right of use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means.

### **14. CONDEMNATION**

In the event any public or private entity having the power of eminent domain exercises its right or power of eminent domain over any portion of the Premises, this Lease shall terminate and the parties' rights and obligations shall be governed by Oregon law. Lessee and the Port agree to cooperate in good faith to resolve any issues relating to value and/or authority to condemn.

### **15. GENERAL PROVISIONS**

#### **15.1 Lease Subject to Matters of Record and Applicable Laws**

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now or hereafter imposed upon the Premises, and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of the Port, execute and deliver agreements of subordination in the form requested by the Port.

## **15.2 Governing Law**

This Lease shall be governed and construed according to the laws of the State of Oregon. Venue for any legal proceedings shall be in Multnomah County, Oregon.

## **15.3 No Benefit to Third Parties**

The Port and Lessee are the only parties to this Lease and, as such, are the only parties entitled to enforce its terms.

## **15.4 Port Consent or Action**

In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be the sole and unfettered discretion of the Port, rather than any standard of good faith, fairness or reasonableness. Wherever this Lease requires the Port's consent or approval, or permits the Port to act, such consent, approval or action may be given or performed by the Port's Commission, the Executive Director of the Port, or the Executive Director's designee. If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. In the event the Port has expressly agreed, in writing, not to act unreasonably in withholding its consent, or may not unreasonably withhold its consent as a matter of law, and the Port has, in fact, acted unreasonably in either of those instances, Lessee's sole remedy shall be an action for specific performance or injunction.

## **15.5 No Implied Warranty**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in, or authorized, is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. Lessee shall be solely responsible for such matters and the Port shall have no liability therefore.

## **15.6 Notices**

All notices required under this Lease shall be deemed properly served if hand delivered (including by reputable overnight courier) or sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the parties at the addresses set forth below:

If by mail to Lessee:

Multnomah County  
Facilities and Property Management  
2505 S.E. 11<sup>th</sup> Avenue  
Portland, OR 97202  
Attention: Robert Oberst

If by hand delivery to Lessee:

Multnomah County  
Facilities & Property Management  
2505 S.E. 11<sup>th</sup> Avenue  
Portland, OR 97202  
Attention: Robert Oberst

If by mail to the Port:

The Port of Portland  
Property & Development Services  
P.O. Box 3529  
Portland, OR 97208  
Attention: Contracts Administrator

If by hand delivery to the Port:

The Port of Portland  
Property & Development Services  
121 N.W. Everett Street  
Portland, OR 97209  
Attention: Contracts Administrator

If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery.

#### **15.7 Time of the Essence**

Time is of the essence in the performance of, and adherence to, each and every covenant and condition of this Lease.

#### **15.8 Nonwaiver**

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future, or of any other provision of this Lease.

#### **15.9 Survival**

Any covenant or condition, including, but not limited to, indemnification provisions, set forth in this Lease, the full performance of which is not specifically required prior to the termination of this Lease, and any covenant or condition which by its terms is to survive the termination of this Lease shall survive the termination of this Lease and shall remain fully enforceable thereafter.

#### **15.10 Partial Invalidity**

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### **15.11 No Light or Air Easement**

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

#### **15.12 Limitation on Port Liability**

The Port shall have no liability to Lessee for loss, damage or injury suffered by Lessee on account of theft or any act or omission of any third party, including other tenants. The Port shall only be liable for its own willful misconduct or gross negligence and then only to the extent of actual and not consequential damages. Although this Lease gives the Port certain rights of inspection, such rights shall impose no obligation on the Port to make any inspections nor impose liability on the Port if the Port fails to make such inspections.

#### **15.13 Calculation of Time**

Unless referred to as Business Days, all periods of time referred to in this Lease shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or Legal Holiday. "Legal Holiday" shall mean any holiday observed by the Federal Government. "Business Days" shall mean Monday through Friday and shall exclude Saturday, Sunday, and Legal Holidays.

#### **15.14 Headings and Table of Contents**

The article and section headings and table of contents contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease.

#### **15.15 Exhibits Incorporated by Reference**

All Exhibits attached to this Lease are incorporated by reference in this Lease for all purposes.

#### **15.16 Modification**

This Lease may not be modified except by a writing signed by the Port and Lessee.

#### **15.17 Brokers**

Lessee and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section only, the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses, including attorney, accountant and paralegal fees, arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

#### **15.18 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever, including any administrative proceeding or any proceeding under the U.S. Bankruptcy Code, is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or

obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, incurred at trial, on appeal or on any petition for review, in addition to all other amounts provided by law. If the Port is required to seek legal assistance to enforce any term of this Lease, such fees shall include all of the above fees, whether or not a proceeding is initiated. Whenever this Lease requires Lessee to defend the Port, it is agreed that such defense shall be by legal counsel acceptable to the Port.

#### **15.19 Entire Agreement**

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises and shall supersede all previous communications, representations, or agreements, whether verbal or written, between the parties hereto with respect to such leasing. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, the claimed breach of any representations or promises not expressly stated in this Lease, any other oral agreement with the Port being expressly waived by Lessee.

#### **15.20 Provisions Applicable to Others**

All provisions of this Lease governing Lessee's use of the Premises and Lessee's activities and conduct on, about, or from the Premises shall apply to Lessee's officers, agents, employees, invitees, and contractors.

#### **15.21 Successors; the Parties**

The rights, liabilities and remedies provided for in this Lease shall extend to the heirs, legal representatives, and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words Port and Lessee and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

#### **15.22 Joint and Several Obligations**

If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

#### **15.23 Interpretation of Lease; Status of Parties**

This Lease is the result of arms length negotiations between the Port and Lessee and shall not be construed against the Port by reason of its preparation of this Lease. Nothing contained in this Lease, including the method of computation of rentals or construction of Improvements on the Premises, shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto.

#### **15.24 Defined Terms**

Capitalized terms shall have the meanings given them in the text of this Lease.

**15.25 No Limit on Port's Powers**

Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain.

**15.26 Capacity to Execute**

The Port and Lessee each warrant and represent to one another that this Lease constitutes a legal, valid and binding obligation of that party. The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they purport to be acting.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

LESSEE  
MULTNOMAH COUNTY

By: Bill Farver  
Bill Farver  
Title: Interim County Chair

LESSOR  
THE PORT OF PORTLAND

By: Mike Thorne  
Mike Thorne, Executive Director

REVIEWED:  
THOMAS SPONSLER, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY

By: John S. Thomas  
John S. Thomas, Assistant County Counsel

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By: Ray B. [Signature]  
Counsel for Port of Portland

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-9 DATE 04/05/01  
DEB BOGSTAD, BOARD CLERK

